

**BOARD OF APPEALS CASE NO. 5283**

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**BEFORE THE**

**APPLICANTS: Michael & Carolyn Stevens**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct an attached garage within the required side yard setback; 1603 Steeple Chase Drive, Jarrettsville**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 8/14/02 & 8/21/02**

**HEARING DATE: October 7, 2002**

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**Record: 8/16/02 & 8/23/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Michael F. and Carolyn R. Stevens, are requesting a variance, pursuant to Section 267-35B, Table III, of the Harford County Code, to construct an attached garage within the required fifteen (15) foot side yard setback (7 feet proposed) in an RR/Rural Residential District.

The subject parcel is located at 1603 Steeplechase Drive, Jarrettsville, Maryland 21084 and is more particularly identified on Tax Map 32, Grid 4C, Parcel 407, Lot 46. The parcel consists of 0.83 acres more or less, is zoned RR and is entirely within the Fourth Election District.

Mr. Michael Stevens appeared and testified that he and his wife would like to add a garage to their existing dwelling. They wish to locate this on the side of their house where an existing driveway is located. According to the witness the construction materials will match the existing dwelling and will be 14 feet by 35 feet in dimensions. There is another residence located on that side of the house. Mr. Stevens described the septic area which is currently located on the other side of the house and stated that its location prevented the garage from being located there. In the opinion of the witness, the property is unique because of its size (less than one acre) and because the house was placed offset on the property pushing it closer to the property line on the side where the garage is proposed than on the other side of the house. In the opinion of the Applicant, no adjacent properties would be adversely impacted by construction of the proposed garage at the proposed location.

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In support of this contention, the Applicant stated that 16 of 18 houses in his neighborhood have garages and 7 of those are two car garages. Additionally, the combined setback of 35 feet will still be met after construction and grant of the requested variance. Upon cross examination, the Applicant stated that his lot was relatively flat, much like other homes near his. Additionally, the witness stated that the proposed location works well because the garage entrance will be through the family room. If it is placed on the other side of the house the entrance will be through the bedroom.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. Mr. McClune stated that the Department agreed with the Applicant that the property was unique. It is a small lot and is constrained on one side by a wrap around septic reserve area. The existing dwelling is offset to one side and there is an existing driveway which taken together create a unique situation on this lot. Mr. McClune stated that the proposed garage is much like other garages found in the neighborhood and the proposed construction would be compatible with other similar uses found in the neighborhood.

Mr. David Reiher appeared as part of the opposition case and testified that he is employed by the Harford County Department of Health. The witness described the property and located the septic reserve area. Additionally, the witness did a site visit to the property. Mr. Reiher indicated that the Applicant has sufficient room on his property to request and be granted a septic reserve modification which would effectively remove the septic reserve from the side of the house where it is currently located and which location prevents location of the garage on that side of the house. Entered as Protestant's Exhibit 1 was the Department of Health's written findings in this regard. Mr. Reiher did indicate pursuit of such a request would likely cost the Applicant between \$600 and \$1200 but stated that he saw nothing in the file that would lead him to conclude that a septic reserve modification would be refused.

Ronald Ruddle appeared and testified that he lives next door to the Applicant at 1601 Steeplechase Drive. Mr. Ruddle is opposed to the grant of this variance for a number of reasons. First the witness explained that the only area available to him on his property for future expansion is on the same side of the house as the Applicant's proposed location. Mr. Ruddle anticipates the need to add an addition to his house and once built he believes the close proximity of the two additions will be very linear in appearance.

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In addition the close proximity of the two additions will not look like other homes in the neighborhood and will be quite unbalanced. Mr. Ruddle also indicated that his open space will be reduced from the minimums required by the Code and he and his family should not be required to suffer that loss of open space, particularly since the Applicant could, according to the Department of Health, be granted a septic reserve modification allowing him to construct the garage on the other side of the house without the need for a variance from setback requirements. Lastly, Mr. Ruddle articulated his concern that allowing this variance protects the Applicants' right to further expand on the other side of the house in the future.

### **CONCLUSION:**

The Applicants, Michael and Carolyn Stevens, are requesting a variance, pursuant to Section 267-35B, Table III, of the Harford County Code, to construct an attached garage within the required fifteen (15) foot side yard setback (7 feet proposed) in an RR/Rural Residential District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

In addition to the requirements of Section 267-11 of the Code as set forth above, the Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

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1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

In the case at hand, the Hearing Examiner finds that the Applicant cannot meet the first prong of the test required by the Cromwell Court. The Department of Health has clearly indicated that a septic reserve modification could be granted which would allow the Applicants to construct their garage on their property without the need for any variance from the provisions of the zoning code. Since the disproportionate impact created by the present location of the septic reserve area can easily be removed, the very reason for the variance ceases to exist. Even if that were not the case, allowing the Applicant to build his garage on the side of the house proposed would reduce open space afforded to the adjoining neighbor which represents an impact not desirable under the provisions of Section 267-11 particularly if some lesser relaxation, or no relaxation of the restrictions of the Code were necessary to allow the Applicant to proceed with his/her proposed use. In this case the hardship resulting to the Applicants by a denial of the requested variance is minimal at best and is in keeping with good planning and zoning principles.

For the foregoing reasons, the Hearing Examiner recommends denial of the request.

Date OCTOBER 21, 2002

William F. Casey  
Zoning Hearing Examiner